

E-Filed on 4/4/08

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Attorneys for USACM Liquidating Trust

UNITED STATES BANKRUPTCY COURT
DISTRICT OF NEVADA

In re:

USA COMMERCIAL MORTGAGE
COMPANY,

USA CAPITAL REALTY ADVISORS,
LLC,

USA CAPITAL DIVERSIFIED TRUST
DEED FUND, LLC,

USA CAPITAL FIRST TRUST DEED
FUND, LLC,¹

USA SECURITIES, LLC,²
Debtors.

Affects:

- ☐ All Debtors
☒ USA Commercial Mortgage Company
☐ USA Capital Realty Advisors, LLC
☐ USA Capital Diversified Trust Deed Fund, LLC
☐ USA Capital First Trust Deed Fund, LLC
☐ USA Securities, LLC

Case No. BK-S-06-10725-LBR
Case No. BK-S-06-10726-LBR
Case No. BK-S-06-10727-LBR
Case No. BK-S-06-10728-LBR¹
Case No. BK-S-06-10729-LBR²

CHAPTER 11

Jointly Administered Under Case No.
BK-S-06-10725 LBR

**DECLARATION OF EDWARD M.
BURR IN SUPPORT OF OMNIBUS
OBJECTIONS TO PROOFS OF
CLAIM BASED UPON
INVESTMENT IN I-40 GATEWAY
WEST, LLC 2ND LOAN; AND
CERTIFICATE OF SERVICE**

Date of Hearing: May 8, 2008
Time of Hearing: 10:30 a.m.

I, Edward M. Burr, hereby declare under penalty of perjury that:

1. I am a principal with Sierra Consulting Group, LLC ("Sierra"). Sierra is one
of the leading providers of restructuring advisory and litigation support services in the

¹ This bankruptcy case was closed on October 12, 2007.

² This bankruptcy case was closed on December 26, 2007.

1 Southwest. Sierra is a leading national consulting firm comprised of experienced CPAs
2 and other financial professionals.

3 2. I submit this declaration on behalf of the USACM Liquidating Trust's
4 Objections to Proofs of Claim filed this date.

5 3. This Court approved the Official Committee of Unsecured Creditors of USA
6 Commercial Mortgage Company's ("Committee") appointment of Sierra as financial
7 advisers on August 11, 2006. From that date to the Effective Date of the Debtors'
8 confirmed Plan of Reorganization, I have assisted the Committee in analyzing facts
9 concerning these jointly administered bankruptcy cases. As of the Effective Date of the
10 confirmed Plan of Reorganization, Sierra has been retained by the USACM Liquidating
11 Trust to investigate and reconcile the claims against the USA Commercial Mortgage
12 Company ("USACM") estate.

13 4. I make the following declaration based upon my personal knowledge, and
14 upon the records of the Debtors described in this declaration, including Debtors' original
15 and amended schedules of liabilities and the proofs of claim described herein, as well as
16 Debtors' accounting records.

17 5. On March 12, 2007 Effective Date of the Plan, the USACM Liquidating
18 Trust succeeded to USACM's rights with respect to books and records.

19 6. Sierra has been working closely with both the Trustee for the USACM
20 Liquidating Trust and Development Specialist Inc. ("DSI"), the Trustee's financial
21 advisor, in evaluating all of the claims that were filed in the USACM estate.

22 7. **Exhibit A**, attached, lists Proofs of Claim that appear to be based, in whole
23 or in part, upon an investment in the I-40 Gateway West, LLC 2nd Loan ("I-40 Gateway
24 West 2nd Loan"). For each claim listed, **Exhibit A** identifies the Proof of Claim number,
25 the claimant, the claimant's address, the total amount of the claim and the total amount of
26

1 the claim that appears to be related to the I-40 Gateway West 2nd Loan based upon the
2 information provided by the claimant.

3 8. We are advised by the loan servicer, confirmed by payment records, that on
4 or about February 14, 2007, the I-40 Gateway West 2nd Loan was paid in full, as reflected
5 in USACM's books and records. Shortly thereafter, USACM processed the payoff and
6 distributed the proceeds to the Direct Lenders on the I-40 Gateway West 2nd Loan.

7 9. The Direct Lenders were paid in full, subject to servicing fees and any other
8 charges under their respective Loan Servicing Agreements and this Court's orders,
9 including the Confirmation Order. In general, the Direct Lenders received their principal
10 and interest on the I-40 Gateway West 2nd Loan, less sums withheld for Prepaid Interest
11 and sums known as the 2% Holdback. On the Effective Date of the Plan, the Prepaid
12 Interest was applied, a portion of the 2% Holdback was applied to the allowed claims of
13 the Direct Lender Committee, and the balance paid to the Direct Lenders.

14 10. Accordingly, the USACM Trust no longer has further obligations to the
15 Direct Lenders arising out of the I-40 Gateway West 2nd Loan because, pursuant to
16 USACM's books and records, the I-40 Gateway West 2nd Loan has been repaid in full,
17 and the Direct Lenders have received such payment as they were entitled to under the
18 confirmed plan of reorganization.

19 Dated: April 4, 2008

20
21
22 /s/ Edward M. Burr

23 Edward M. Burr
24
25
26

LEWIS
AND
ROCA
LLP
LAWYERS

1 Copy of the foregoing mailed by first class
2 Postage prepaid U.S. Mail on
3 April 4, 2008 to:

4 All parties in interest listed on
5 Exhibit A attached.

6 s/ Renee L. Creswell
7 Renee L. Creswell
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